

1 KAMALA D. HARRIS
Attorney General of California
2 CHRISTINA BULL ARNDT
Supervising Deputy Attorney General
3 MITCHELL E. RISHE
Deputy Attorney General
4 State Bar No. 193503
300 South Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6224
6 Fax: (213) 897-2801
E-mail: Mitchell.Rishe@doj.ca.gov
7 *Attorneys for Respondent and Defendant, California*
Department of Conservation, Division of Oil, Gas,
8 *and Geothermal Resources*

NO FEE
Pursuant to Government Code
Section 6103

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF FRESNO

12 **HATHAWAY LLC, A CALIFORNIA LIMITED**
13 **LIABILITY COMPANY,**

14 Petitioner/Plaintiff,

15 v.

16 **CALIFORNIA DEPARTMENT OF**
17 **CONSERVATION, DIVISION OF OIL, GAS AND**
18 **GEOTHERMAL RESOURCES; AND DOES 1-**
100, INCLUSIVE,

19 Respondents/Defendants.

Case No. 14 CE CG 03619

ANSWER TO VERIFIED PETITION
FOR: (1) WRIT OF MANDATE; AND
COMPLAINT FOR: (2) INVERSE
CONDEMNATION; AND (3)
DECLARATORY RELIEF

Dept.: D51
Judge: Hon. Debra Kazanjian

Trial Date: Not Set
Action Filed: December 2, 2014

21 **ANSWER**

22 Respondent and defendant, Department of Conservation, Division of Oil, Gas and
23 Geothermal Resources ("Division"), by and through its attorneys of record, hereby answers
24 petitioner and plaintiff Hathaway LLC's ("Hathaway") verified petition for: (1) writ of mandate;
25 and complaint for: (2) inverse condemnation; and (3) declaratory relief, filed on December 2,
26 2014 (the "Petition"), as follows:

1 1. Answering paragraph 1 of the Petition, the Division lacks sufficient knowledge or
2 information to form a belief as to the truth of the allegations, and on that basis denies each and
3 every allegation therein.

4 2. Answering paragraph 2 of the Petition, the Division admits that it is an agency of the
5 State of California. The Division admits that it is responsible for regulating and overseeing the
6 drilling, operation, maintenance, and plugging and abandonment of oil, natural gas, and
7 geothermal operations in California. The allegations in the third sentence of paragraph 2 are too
8 vague to respond to, and on that basis the Division denies each and every allegation in the third
9 sentence of paragraph 2.

10 3. Answering paragraph 3 of the Petition, the Division lacks sufficient knowledge or
11 information to form a belief as to the truth of the allegations, and on that basis denies each and
12 every allegation therein.

13 4. Answering paragraph 4 of the Petition, the Division lacks sufficient knowledge or
14 information to form a belief as to the truth of the allegations, and on that basis denies each and
15 every allegation therein.

16 5. Answering paragraph 5 of the Petition, said paragraph consists entirely of legal
17 argument and/or conclusions to which no response is required. To the extent a response is
18 required, the Division lacks sufficient knowledge or information to form a belief as to the truth of
19 the allegations, and on that basis denies each and every allegation therein.

20 6. Answering paragraph 6 of the Petition, the Division admits that it is an agency of the
21 State of California and is represented by the California Attorney General in this litigation, which
22 has an office in Fresno County. The remainder of paragraph 6 consists entirely of legal argument
23 and/or conclusions to which no response is required. To the extent a response is required, the
24 Division lacks sufficient knowledge or information to form a belief as to the truth of the
25 allegations, and on that basis denies each and every allegation therein.

26 7. Answering paragraph 7 of the Petition, said paragraph consists entirely of allegations
27 about actions Hathaway “will” take in the future, to which no response is required. To the extent a
28

1 response is required, the Division lacks sufficient knowledge or information to form a belief as to
2 the truth of the allegations, and on that basis denies each and every allegation therein.

3 8. Answering paragraph 8 of the Petition, the Division admits that its records indicate
4 Hathaway operates wells on the KCL lease located at Section 23, Township 29 South, Range 27
5 East, within the administrative boundaries of Fruitvale Oil Field (“Fruitvale”) in Kern County.
6 The Division lacks sufficient knowledge or information to form a belief as to the truth of all
7 remaining allegations in paragraph 8, and on that basis denies each and every remaining
8 allegation therein.

9 9. Answering paragraph 9 of the Petition, the Division admits that on or around August
10 8, 2014, Hathaway submitted an injection project application to the Division seeking
11 authorization to drill and operate three Class II disposal wells in or around Fruitvale, identifying
12 the Santa Margarita formation as the target injection zone (UIC Project Code 25609123).
13 Answering the second sentence of paragraph 9, the Division responds that 40 C.F.R. §§ 144.6 and
14 146.5 speak for themselves. Answering the third sentence of paragraph 9, the Division admits that
15 the term “produced water” has been used by the oil industry to describe water and other
16 constituents generated as a byproduct of oil and gas production. The Division specifically denies
17 that “produced water” is limited to describing only “water” and not other constituents that may
18 also be present. The Division lacks sufficient knowledge or information to form a belief as to the
19 truth of all remaining allegations in paragraph 9, and on that basis denies each and every
20 remaining allegation therein.

21 10. Answering paragraph 10 of the Petition, the Division responds that it lacks sufficient
22 knowledge or information to form a belief as to whether the entire Santa Margarita formation
23 underlying Fruitvale is hydrocarbon-producing at all depths and all locations within the Field, and
24 on that basis denies the allegation. The Division lacks sufficient knowledge or information to
25 form a belief as to whether the United States Environmental Protection Agency (“U.S. EPA”)
26 exempted the entire Santa Margarita formation from the federal Safe Drinking Water Act, 42
27 U.S.C. § 300h et seq. (“SDWA”), at all depths and all locations underlying Fruitvale, and on that
28 basis denies the allegation. The Division admits that if an aquifer (or portion thereof) is “exempt”

1 from the SDWA, the Division has discretionary authority to approve – and likewise to disapprove
2 – a UIC permit for Class II water disposal into that portion of the aquifer. The Division lacks
3 sufficient knowledge or information to form a belief as to the truth of all remaining allegations in
4 paragraph 10, and on that basis denies each and every remaining allegation therein.

5 11. Answering the first sentence of paragraph 11 of the Petition, the Division admits that
6 it issued the four permits to drill wells, copies of which are attached to the Petition in “Exhibit F,”
7 however, the Division denies that the permits authorize the wells, none of which are Class II
8 wells, to inject into the Santa Margarita formation underlying Fruitvale. Answering the second
9 sentence of paragraph 11, the Division admits that its records indicate that said wells are currently
10 operating within the administrative boundaries of Fruitvale, but the Division denies that it has
11 regulatory jurisdiction over injection at these wells which are not Class II wells. Answering the
12 third sentence of paragraph 11, the allegation appears to significantly overstate (by more than one
13 third) the cumulative injection volumes of these four wells – a conclusion the Division makes
14 based on its review of injection reports submitted to the Division by the operators of these wells
15 and which are made publicly available through the Division’s website – and on that basis the
16 Division denies the allegations.

17 12. Answering paragraph 12 of the Petition, the Division denies each and every allegation
18 therein.

19 13. Answering paragraph 13 of the Petition, the Division admits that Hathaway provided
20 the Division with a letter dated September 4, 2014, a copy of which is attached as “Exhibit B” to
21 the Petition. As to the contents of the letter, the document speaks for itself. With respect to the
22 third sentence of paragraph 13, the Division admits that, at the time of the filing of the Petition, it
23 had not made a final determination on Hathaway’s permit application or responded to Hathaway’s
24 September 4, 2014 letter, but denies it has failed to process the application. The Division denies
25 each and every remaining allegation in paragraph 13.

26 14. Answering paragraph 14 of the Petition, said paragraph consists entirely of legal
27 argument and/or conclusions to which no response is required. Notwithstanding the foregoing, the
28

1 Division denies each and every allegation therein. In particular, the Division denies that the
2 Petition is “necessary” or that Hathaway is entitled to the relief sought, or any relief whatsoever.

3 15. Answering paragraph 15 of the Petition, the Division responds that section 1421,
4 subdivision (b)(1), of the Safe Drinking Water Act (42 U.S.C. § 300h, subd. (b)(1)) speaks for
5 itself. The Division lacks sufficient knowledge or information to form a belief as to the truth of
6 the remaining allegations, and on that basis denies the allegations.

7 16. Answering paragraph 16 of the Petition, the Division responds that the federal
8 regulations promulgated pursuant to the SDWA, and the definitions therein, including 40 C.F.R.
9 §§ 144.3 and 146.3, speak for themselves. The Division admits that an aquifer exemption is
10 required prior to or concurrent with the issuance of an approval or permit for injection into an
11 aquifer that qualifies as an “underground source of drinking water.”

12 17. Answering paragraph 17 of the Petition, the Division responds that 40 C.F.R. §§
13 146.4 and 144.7 speak for themselves.

14 18. Answering paragraph 18 of the Petition, the Division responds that it lacks sufficient
15 knowledge or information to form a belief as to whether the entire Santa Margarita formation
16 underlying Fruitvale is hydrocarbon-producing at all depths and all locations within the field, and
17 on that basis denies the allegation. The Division further lacks sufficient knowledge or
18 information to form a belief as to whether the U.S. EPA exempted for purposes of Class II
19 injection the entire Santa Margarita formation from the SDWA at all depths and all locations
20 underlying Fruitvale, and on that basis denies the allegation. Answering the final sentence of
21 paragraph 18, the Division denies, upon information and belief, the allegation that the first oil
22 production well drilled into the Santa Margarita formation at Fruitvale was completed in
23 December 1926. Volume I of “California Oil and Gas Fields” identifies “Fruitvale 1,” completed
24 in February 1928, as the original well in Fruitvale. The Division denies each and every remaining
25 allegation in paragraph 18.

26 19. Answering paragraph 19 of the Petition, the Division admits that in or around April
27 1981 the Division applied to U.S. EPA, pursuant to section 1425 of the SDWA, for primary
28 responsibility to regulate the underground injection of Class II fluids in California. Answering the

1 remainder of paragraph 19, the Division responds that section 1425 of the SDWA speaks for
2 itself.

3 20. Answering paragraph 20 of the Petition, the Division admits that its Primacy
4 Application (referred to in the Petition and hereinafter as the “1425 Demonstration”), was based
5 on its statutory authority pursuant to Division 3 of the Public Resources Code (Pub. Resources
6 Code, §§ 3000-3359), and Title 14 of the California Code of Regulations (§§ 1710-1724.10).
7 Answering the remainder of paragraph 20, the Division responds that the referenced sections of
8 the Public Resources Code and California Code of Regulations speak for themselves.

9 21. Answering paragraph 21 of the Petition, the Division admits that, as part of its 1425
10 Demonstration, the Division identified those aquifers it was proposing for exemption pursuant to
11 40 CFR §§ 146.4 and 144.7. The Division further admits that “Exhibit C” to the Petition appears
12 to be a copy of an excerpt from Appendix B of the 1425 Demonstration. Answering the
13 remainder of paragraph 21, the Division responds that Appendix B of the 1425 Demonstration
14 speaks for itself.

15 22. Answering paragraph 22 of the Petition, the Division responds that it lacks sufficient
16 knowledge or information to form a belief as to whether the entire Santa Margarita formation
17 underlying Fruitvale is hydrocarbon-producing at all depths and all locations within the field, and
18 on that basis denies the allegation. The Division admits that “Exhibit D” to the Petition appears
19 to be a copy of an excerpt from Volume I of “California Oil and Gas Fields.” As to the contents
20 of Volume I of “California Oil and Gas Fields,” attached as “Exhibit D” to the Petition, the
21 document speaks for itself. The Division denies each and every remaining allegation in paragraph
22 22.

23 23. Answering paragraph 23 of the Petition, the Division admits that in or around 1982
24 U.S. EPA granted the Division primary responsibility to regulate the underground injection of
25 Class II fluids in California. The Division further admits that a Memorandum of Agreement
26 (“Primacy MOA”) was executed between the Division and U.S. EPA, which memorialized the
27 Division’s primacy and established the respective responsibilities and procedures of the Division
28

1 and U.S. EPA in the administration of the Class II Underground Injection Control (“UIC”)
2 program in California.

3 24. Answering paragraph 24 of the Petition, the Division lacks sufficient knowledge or
4 information to form a belief as to the truth of the allegation that “Exhibit E” to the Petition is a
5 true and correct copy of the Primacy MOA, and on that basis the Division denies the allegation.
6 Answering the remainder of paragraph 24, the Division responds that the MOA speaks for itself.

7 25. Answering the first sentence of paragraph 25 of the Petition, the Division denies each
8 and every allegation therein. Answering the second sentence of paragraph 25, the Division
9 admits that it issued permits to drill wells identified by the listed API numbers (copies of which
10 permits are attached to the Petition in “Exhibit F”); however, the Division denies that the permits
11 authorize the wells, none of which are Class II wells, to inject into the Santa Margarita formation
12 underlying Fruitvale. Answering the third sentence of paragraph 25, said sentence appears to
13 significantly overstate (by more than one third) the cumulative injection volumes of these four
14 wells – a conclusion the Division makes based on its review of injection reports submitted to the
15 Division by the operators of these wells and which are made publicly available through the
16 Division’s website – and on that basis the Division denies the allegations.

17 26. Answering paragraph 26 of the Petition, the Division lacks sufficient knowledge or
18 information to form a belief as to the truth of the allegations, and on that basis denies each and
19 every allegation therein.

20 27. Answering the first two sentences of paragraph 27 of the Petition, the Division
21 responds that 40 C.F.R. § 145.32 speaks for itself. The Division admits the allegations in the
22 third sentence of paragraph 27, namely, that there have been no efforts to “withdraw” any
23 exemption that may apply to the Santa Margarita formation at Fruitvale. Answering the final
24 sentence of paragraph 27, the Division lacks sufficient knowledge or information to form a belief
25 as to whether U.S. EPA exempted from the federal SDWA the entire Santa Margarita formation
26 at all depths and all locations underlying Fruitvale, and on that basis denies the allegation. The
27 Division further responds that, even assuming *arguendo* the U.S. EPA exempted from the federal
28 SDWA the entire Santa Margarita formation underling Fruitvale, the existence of an aquifer

1 exemption does not remove the Division's discretionary authority under the law and compel the
2 Division to approve injection into that aquifer regardless of other facts and circumstances, such as
3 the present and potential future resource value of the aquifer.

4 28. Answering paragraph 28 of the Petition, the Division admits that on or around August
5 8, 2014, Hathaway submitted an injection project application to the Division seeking
6 authorization to drill and operate three Class II disposal wells in or around Fruitvale, identifying
7 the Santa Margarita formation as the target injection zone. The Division denies all remaining
8 allegations in paragraph 28, including that the injection project application at issue is "complete."

9 29. Answering paragraph 29 of the Petition, the Division denies each and every allegation
10 therein.

11 30. Answering paragraph 30 of the Petition, the Division admits that Hathaway provided
12 the Division with a letter dated September 4, 2014, a copy of which is attached as "Exhibit B" to
13 the Petition. As to the contents of the letter, the document speaks for itself. With respect to the
14 third sentence of paragraph 30, the Division admits that, at the time of the filing of the Petition, it
15 had not made a final determination on Hathaway's permit application or responded to Hathaway's
16 September 4, 2014 letter, but denies that it has failed to process the application. The Division
17 denies each and every remaining allegation in paragraph 30.

18 31. Answering paragraph 31 of the Petition, said paragraph consists entirely of legal
19 argument and/or conclusions to which no response is required. To the extent a response is
20 required, the Division denies each and every allegation therein. The Division specifically denies
21 that it has imposed an unlawful "moratorium" on the processing and issuance of permits.

22 32. Answering paragraph 32 of the Petition, said paragraph consists entirely of legal
23 argument and/or conclusions to which no response is required. To the extent a response is
24 required, the Division denies each and every allegation therein. The Division specifically denies
25 that it is "improperly and unlawfully avoiding action" on Hathaway's application, or that it is
26 "refusing to apply the established regulatory principles" to Hathaway's application.

27 33. Answering paragraph 33 of the Petition, said paragraph consists entirely of legal
28 argument and/or conclusions to which no response is required. To the extent a response is

1 required, the Division denies each and every allegation therein. The Division specifically denies
2 that it “refusing to act upon” or “apply the mandatory regulatory criteria in processing”
3 Hathaway’s application.

4 34. Answering paragraph 34 of the Petition, the Division denies each and every allegation
5 therein.

6 35. Answering paragraph 35 of the Petition, the Division hereby incorporates by
7 reference its responses to paragraphs 1-34, as though set forth in full.

8 36. Answering paragraph 36 of the Petition, the Division denies each and every allegation
9 therein.

10 37. Answering paragraph 37 of the Petition, the Division denies each and every allegation
11 therein.

12 38. Answering paragraph 38 of the Petition, the Division hereby incorporates by
13 reference its responses to paragraphs 1-37, as though set forth in full.

14 39. Answering paragraph 39 of the Petition, the Division lacks sufficient knowledge or
15 information to form a belief as to whether Hathaway “had the reasonable investment-backed
16 expectation” that the leases at issue “could be used for the production of oil and natural gas,” and
17 on that basis denies the allegations. The Division denies each and every remaining allegation in
18 paragraph 39. The Division specifically denies that it is “unreasonably and unlawfully delaying
19 action” upon Hathaway’s application; that it is “ignoring established regulatory criteria”; or that it
20 is imposing an “unlawful moratorium” on the production of oil and natural gas from the Leases.

21 40. Answering paragraph 40 of the Petition, the Division denies each and every allegation
22 therein.

23 41. Answering paragraph 41 of the Petition, the Division admits that it has not paid
24 Hathaway “compensation” related to the subject matter of the Petition. The Division denies each
25 and every remaining allegation in paragraph 41.

26 42. Answering paragraph 42 of the Petition, the Division lacks sufficient knowledge or
27 information to form a belief as to the truth of the allegations, and on that basis denies each and
28

every allegation therein. With respect to the allegations regarding section 1036 of the Code of Civil Procedure, the Division responds that the statute speaks for itself.

43. Answering paragraph 43 of the Petition, the Division hereby incorporates by reference its responses to paragraphs 1-42, as though set forth in full.

44. Answering paragraph 44 of the Petition, the Division denies each and every allegation therein. The Division further responds that the applicability of an aquifer exemption under the federal SDWA – even assuming *arguendo* one is applicable – does not remove the Division’s discretionary authority under the law to deny approval of the proposed injection project based on other factors, including but not limited to the present and potential future resource value of the aquifer.

45. Answering paragraph 45 of the Petition, the first sentence of said paragraph consists of a statement regarding Hathaway’s desired relief, to which no response is required. To the extent a response is required, the Division denies the allegations in the first sentence of paragraph 45. The remainder of paragraph 45 consists entirely of legal argument and/or conclusions to which no response is required. To the extent a response is required, the Division responds that section 1060 of the Code of Civil Procedure and the case of *K.G. v. Meredith* (2012) 204 Cal.App.4th 164 speak for themselves. The Division denies each and every remaining allegation in paragraph 45.

46. Answering the section entitled “Prayer,” the Division denies that Hathaway is entitled to any of the relief it requests, or any other type of relief. The Division denies any further allegations not specifically admitted in the Answer.

AFFIRMATIVE DEFENSES

As separate and affirmative defenses, the Division alleges as follows:

First Affirmative Defense

(Failure to State a Claim)

The Division alleges that Hathaway failed to allege facts sufficient to support any claim for relief.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Second Affirmative Defense

(Lawful Exercise of Discretion and Compliance with Law)

The Division alleges that it lawfully exercised its discretion and fully complied with all applicable laws.

Third Affirmative Defense

(Ripeness)

The Division alleges that Hathaway’s claims are not ripe.

Fourth Affirmative Defense

(Mootness)

The Division alleges that Hathaway’s claims are moot.

Fifth Affirmative Defense

(Failure to Exhaust Administrative Remedies)

The Division alleges that Hathaway failed to exhaust all available administrative remedies and based upon that failure, this court lacks jurisdiction to consider its claims.

Sixth Affirmative Defense

(Statute of Limitations)

The Division alleges that Hathaway’s claims for relief are barred by the statute of limitations, including, but not limited to, Code of Civil Procedure sections 337 and 338.

Seventh Affirmative Defense

(Adequate Remedy At Law)

The Division alleges that Hathaway has an adequate remedy at law.

Eighth Affirmative Defense

(Proper Exercise Of Police Power)

The Division alleges that the acts and omissions alleged in the complaint, to the extent they occurred at all, were a valid exercise of its police power.

//

1 **Ninth Affirmative Defense**

2 **(Waiver/Estoppel)**

3 The Division alleges that Hathaway's claims for relief are barred by the doctrines of waiver
4 and/or estoppel.

5 **Tenth Affirmative Defense**

6 **(Laches)**

7 The Division alleges that Hathaway's claims for relief are barred because they delayed in
8 bringing such claims to the detriment of the Division.

9 **Eleventh Affirmative Defense**

10 **(No Justiciable Controversy)**

11 The Division alleges that Hathaway failed to allege a justiciable controversy in order to be
12 entitled to seek declaratory relief.

13 **Twelfth Affirmative Defense**

14 **(Declaratory Relief Is Unavailable)**

15 The Division alleges that Hathaway is not entitled to declaratory relief.

16 **Thirteenth Affirmative Defense**

17 **(Res Judicata)**

18 The Division alleges that Hathaway's claims for relief are barred by the doctrines of res
19 judicata and collateral estoppel.

20 **Fourteenth Affirmative Defense**

21 **(Reliance upon Defenses of Other Parties)**

22 The Division intends to rely, if appropriate, upon any other applicable defenses asserted by
23 any presently unnamed or named respondent, real party in interest or defendant, in addition to its
24 defenses asserted in this answer.

25 **Fifteenth Affirmative Defense**

26 **(Additional Defenses)**

27 The Division intends to rely upon other applicable defenses as may subsequently become
28 apparent, and it hereby reserves its right to assert such defenses in the future.

1 WHEREFORE, the Department of Conservation, Division of Oil, Gas and Geothermal
2 Resources, prays for judgment as follows:

- 3 1. That the Court deny the declaratory relief sought by Hathaway;
- 4 2. That Hathaway take nothing by this action;
- 5 3. That the Court award to the Division the costs of suit incurred in this action; and
- 6 4. That the Court award such other relief as the Court deems just and proper.

7
8 Dated: January 23, 2015

Respectfully Submitted,

9 KAMALA D. HARRIS
10 Attorney General of California
11 CHRISTINA BULL ARNDT
12 Supervising Deputy Attorney General

13
14 MITCHELL E. RISHE
15 Deputy Attorney General
16 *Attorneys for Respondent and Defendant,*
17 *California Department of Conservation,*
18 *Division of Oil, Gas, and Geothermal*
19 *Resources*
20
21
22
23
24
25

26 LA2014118652
27 51683062.doc
28